Madelaine Chocolate Novelties, Inc. *and* Local 1222, United Service Employees Union, TCU, AFL–CIO. Case 29–RC–9553

May 4, 2001

DECISION ON REVIEW AND ORDER

BY MEMBERS TRUESDALE AND MEMBERS HURTGEN AND WALSH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Order dismissing the petition. The request for review is granted.

Having carefully considered the case in light of the facts set forth by the Regional Director, we find, contrary to the Regional Director, that there is no contract bar to the petition.

The facts are not in dispute. The Employer and the Intervenor[1] were parties to a collective-bargaining agreement effective by its terms from April 1, 1997, through March 31, 2001. On March 29, 2000, the Employer and the Intervenor entered into a new collective-bargaining agreement, effective by its terms from April 1, 2000, through March 31, 2004. That contract, however, simply adopted, as the terms and conditions of employment of the first year of the new contract, the identical terms and conditions of employment for the last year of the 1997–2001 agreement. In addition, the agreement provided for a reopener in July 2000 for negotiations covering all economic matters and items for the second, third, and fourth contract years; and that the parties would meet for such negotiations until such negotiations were completed, the agreed-upon terms were embodied in a written document, and the written document executed.[2]

The Petitioner filed the petition in this case on October 19, 2000. If the 1997–2001 agreement were the only agreement involved in this case, that agreement would not operate as a bar to the petition since the petition was filed in the fourth year of that agreement. *General Cable Corp.*, 139 NLRB 1123 (1962) (contract having a fixed term of more than 3 years operates as bar to a petition only for its first 3 years). The issue presented in this case is whether the parties' "new" 4–year collective-bargaining agreement, which was entered into before the petition was filed, operates as a bar to the petition.

The Board's contract-bar doctrine is intended to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co*., 121 NLRB 1160, 1161 (1958). As the Board explained in *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861(1999):

> Thus, in general, the doctrine's dual rationale is to permit the employer, the employees' chosen collective-bargaining representative, and the employees a reasonable, uninterrupted period of collective-bargaining stability, while also permitting the employees, at reasonable times, to change their bargaining representative, if that is their desire. It is worth noting that the contract-bar doctrine "is not compelled by the Act or by judicial decision thereunder. It is an administrative device early adopted by the Board in the exercise of its discretion as a means of maintaining stability of collective bargaining relationships." The Board has discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided overall by our interest in stability and fairness in collective-bargaining agreements. [Citations omitted.]

Guided by these principles, the Board has developed certain specific contract-bar rules. One of these rules is that, in order to act as a bar to a petition, a collective-bargaining agreement must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. *Appalachian Shale Products Co.*, supra at 1163. We find that the 2000–2004 collective-bargaining agreement, in its entirety, does not satisfy this rule.

All economic matters for the last 3 years of the contract were left open for future negotiations, which were to begin less than 4 months after execution of the agreement. Further, the parties simply adopted the terms and conditions of the fourth year of their prior contract, to which they were already obligated, as the first year of their new contract. In short, the parties did not engage in substantive negotiations for any additions or modifications to the terms and conditions of employment for the year 2000 or for any subsequent years. The "new" agreement therefore was nothing more than an agreement to begin negotiations in the near future. Under these circumstances, we find that the stability afforded by this agreement is outweighed by the freedom of employees' choice.

Contrary to our dissenting colleague, we will not allow the parties to transform the fourth year of their 4-year contract—which would not be a bar to the petition—into a 1-year bar to an outside petition merely by changing the dates of the agreement.

For these reasons, we find that the contract between the Employer and the Intervenor does not operate to bar the petition. Accordingly, we reinstate the petition and

[1] Madelaine Independent Association.

[2] There is no indication that the parties engaged in such negotiations or reached agreement on contract terms.

remand the case to the Regional Director for further appropriate action.

MEMBER HURTGEN, dissenting.

I agree with the Regional Director that the contract here was a bar at the time that the petition herein was filed on October 19, 2000.

In brief, the Employer and the incumbent Union entered into a contract on March 29, 2000. The contract set forth full terms and conditions of employment for a 1-year period from April 1, 2000, to March 31, 2001. Thus, the contract barred the petition filed on October 19, 2000.

My colleagues note that the contract actually runs for 4 years, i.e., until March 31, 2004, and that it is silent with respect to the economic terms and conditions that will apply for the last 3 years. The parties were to negotiate these terms beginning in July 2000. However, this fact does not diminish the critical point that the contract sets forth full terms and conditions for the period April 1, 2000, to March 31, 2001. The purpose of the contract-bar rule is to protect the stability afforded by a collective-bargaining agreement. That stability exists for the period from April 1, 2000, to March 31, 2001. Thus, the petition of October 19, 2000, is contract-barred.

The majority argues that my position is incorrect because it treats part of the contract (the first year) as a bar, while treating the other part (the last 3 years) as a nonbar. However, it is not unusual to treat a contract in this fashion. For example, in cases where there is a 5-year contract, that contract has bar quality for the first 3 years and lacks bar quality for the last 2 years.

Nor does it matter that the first year of the contract was identical to the last year of the prior contract. The parties entered into a new contract on March 29, 2000. The fact that they chose not to change from the fourth year of the prior contract is of no moment. For contract bar purposes, one looks to whether the contract stabilizes terms and conditions of employment. It does not matter what those terms and conditions are.

Further, the last year of the prior contract was its fourth year, and thus a petition could have been filed at any time during that year. Thus, the contract at issue here was not a premature extension of the prior contract.

In addition, there is no evidence whatsoever that the parties acted with the intention of freezing out a rival union.

My colleagues say that the parties did not engage in "substantive negotiations" for the contract. There is no evidence regarding the negotiations or any lack thereof. Thus, my colleagues' statement has no evidentiary support. In addition, even if there were no "substantive negotiations," i.e., even if the parties simply agreed to the contract described above, I am aware of no case, and my colleagues cite none, which holds that a contract can only be a bar if it has been the product of "substantive negotiations." As discussed above, a contract is a bar if it stabilizes terms and conditions of employment. The character and extent of negotiations (difficult and long or easy and short) are of no relevance.